

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN BENCIVENGO, et al.,	:	CIVIL ACTION NO. 03-3101 (MLC)
	:	
Plaintiffs,	:	MEMORANDUM OPINION
	:	
v.	:	
	:	
JOHN M. ERATO, et al.,	:	
	:	
Defendants.	:	
_____	:	

THE COURT ISSUED an order to show cause why the complaint should not be dismissed for lack of prosecution under Local Civil Rule 41.1(a) and Federal Rule of Civil Procedure ("Rule") 41(b). (Dkt. entry no. 10, 2-3-05 Ord. to Show Cause). The defendants remaining in the action are John M. Erato, Antilles Management Enterprises, Ltd., Antilles Management, N.V., Point Pirouette Villa Hotels, Thousand Suns, Inc., Hotel Venezia, Waterfront Properties, Ltd., Inc., and Roman Management ("Remaining Defendants"). Default was entered against the Remaining Defendants on September 20, 2004. (Unnumbered dkt. entry btwn. dkt. entry nos. 7 & 8.)

THE PLAINTIFFS RESPONDED to the order to show cause, and moved under Rule 55(b) for entry of judgment by default against the Remaining Defendants. (Dkt. entry nos. 11-14.) The plaintiffs sought damages in the amount of \$244,000, which included: (1) \$100,000 invested as an ownership interest in certain property in St. Maarten, Netherlands Antilles; and, (2)

\$144,000 for "undisbursed net rents" from that property.

(Bencivengo Aff. in Support, at 4.) On June 16, 2005, the Court conducted oral argument, wherein the Court (1) advised the plaintiffs that the proof of damages submitted was insufficient, and (2) directed them to submit further proof of damages in support of the motion.

THE PLAINTIFFS HAVE SUBMITTED a supplemental affidavit.

(Dkt. entry no. 16, Bencivengo Supp. Aff., Exs. A-B.) Therein, they properly support the part of the motion seeking damages in the amount of \$100,000 for the investment. (Id.) But the supplemental affidavit is silent as to the \$144,000 sought for rents, and thus the plaintiffs have failed to demonstrate that they are entitled to an award including that amount. Thus, the Court will (1) vacate the order to show cause, and (2) grant only the part of the motion seeking entry of judgment by default in the amount of \$100,000. The Court also will direct that the judgment is to bear interest at the judgment rate from the date of entry of judgment until it is paid. For good cause appearing, the Court will issue an appropriate order and judgment.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge